

WORKPLACE SAFETY ISSUES IN THE PEOPLE'S REPUBLIC OF CHINA

ROUNDTABLE BEFORE THE CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA ONE HUNDRED SEVENTH CONGRESS SECOND SESSION

HONG KONG SAR, CHINA, NOVEMBER 7, 2002

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THURSDAY, NOVEMBER 7, 2002

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Hong Kong SAR, China.

The roundtable was convened at 10 a.m., John Foarde (deputy staff director) presiding.

Also present: Susan Roosevelt Weld, general counsel; Selene Ko, senior counsel for commercial rule of law; and Lawrence Brown, specialist on labor issues.

Mr. FOARDE. My name is John Foarde. I am deputy staff director of the Congressional-Executive Commission on China based in Washington, DC. With me are several colleagues whom I will introduce in just a moment. Welcome to this staff-led issues roundtable on workplace safety issues in the People's Republic of China [PRC]. This issues roundtable series is a continuation of a series that we have conducted successfully in Washington, DC, where we have experts come in to get very deeply into individual issues of human rights, rule of law, and legal reform. And having a roundtable here in Hong Kong is an experiment. We had the opportunity to invite these very fine panelists, whom I will also introduce in a moment, to come and speak with us today, and so we are grateful for the ability to do this in the Hong Kong Special Administrative Region. We are grateful to the Foreign Correspondents' Club [FCC] for letting us use this facility, and of course grateful to our panelists.

On behalf of Senator Max Baucus, the chairman of the Congressional-Executive Commission on China, and Congressman Doug Bereuter, the co-chairman, we are delighted to be here and have this opportunity. Let me introduce my colleagues. Immediately to my left is Lary Brown. Lary is a specialist on labor issues with the Commission, and came to us earlier this year from Verité. To his left is Susan Roosevelt Weld. Susan is the general counsel of the Commission, and came to us from a long and distinguished career in academic life in the United States on Chinese law and Chinese history and a number of other subjects. Immediately to her left is Selene Ko. Selene is our chief counsel for trade and commercial law, and looks at WTO implementation and compliance issues as part of her commercial rule of law mandate. She came to us from the Department of Labor. She has also had a distinguished career in private law practice in the United States.

I am delighted to introduce our three panelists this morning. Ms. Trini Leung is an independent researcher who has spent a great deal of time investigating a wide range of labor issues, and we look

forward to her presentation. Han Dongfang is the director of the China Labor Bulletin and conducts a well-known and very popular call-in radio program on Radio Free Asia from here in Hong Kong. Mr. Chan Ka-wai is the deputy director of the Hong Kong China Christian Industrial Committee [CIC], and an expert on a number of labor issues, particularly in the toy industry. We are grateful for all three of you coming to share your expertise with us this morning.

We are going to conduct this roundtable in the same format that we have used successfully in Washington, DC. That is, I will invite each of our panelists to make a statement for 10 minutes. When there is 1 minute left, I am going to hold up this very elegant sign so that they know that they have 1 minute remaining to wrap up their formal presentations. We are grateful for the written statements that they have given us, which will be posted on the Commission's Web site. When each of the three has spoken we will then open it up to questions from the four of us here, and we will go through as many rounds as we can before our time is up.

So, without further ado, I would be delighted to hear from Ms. Trini Leung.

**STATEMENT OF TRINI LEUNG, INDEPENDENT RESEARCHER,
SOCIAL DEVELOPMENT, LABOR, CHINA, AND EAST ASIA,
OXFORD, UK**

Ms. LEUNG. Thank you. Good morning everyone. I would like to start today's discussion by putting forward first a kind of analysis or assessment of the problems, and the situation of health and safety in China. The second part will be to discuss the possibilities of what are the better ways to address the problems, and what are the possible solutions to the existing problems.

I think the main problem is that there are many laws and many rules and much official machinery for the monitoring of health and safety in China, but it does not get implemented. So that is the main problem, the main deadlock in China at the moment on health and safety. The overall strategy that I would recommend is that a new strategy is needed. The previous strategy over the past 10 years or more mainly has been focusing on facilitating or building up the capacity of all the official machinery, including the laws and regulations, government institutions and personnel, etc. But it has not borne fruit, so there has to be some review of this strategy. It has not worked.

Concerning the current situation, there are a couple of quite significant legal landmarks, which took place this year. Of the three laws, the most important law is the Work Safety Law, which just came into effect on the first of November. Then the Prevention of Occupational Disease Law was implemented in May this year. The third one is a directive on the handling of dangerous chemicals, which will take effect on November 15.

The Work Safety Law is being put forward as the main tool, the main success of the culmination in the past decade of efforts by the government trying to tackle this ever-deteriorating health and safety problem in China.

Other than the law, in the year 2000 a very important government machinery was established, which was the State Administra-

tion of Work Safety. And under it the State Administration of Coal Mine Safety was set up. Now, this agency was set up because previously health and safety was managed or inspected by various industrial ministries and health ministries, and it did not work. So then the government said they would put all their focus in one agency, so that is administrative progress. At least it rationalized the system a little bit. But the situation has still gone from bad to worse, and in my paper I have quoted some official figures, but I would like to draw your attention to the admission even by the government in many instances that the official record, the official statistics, represents only the tip of a huge iceberg of health hazards in the workplace in China.

Now to spend a bit of time on the problems. I will try to identify or to focus on who are the worst offenders. In terms of ownership of enterprises, in my paper I have listed several types of ownership of enterprises. In general the state-owned enterprises are less of a problem, but still the situation there is quite bad, but the situation is 10 times worse in the private sector. And according to the government about 74 percent of all serious accidents in industrial and mining enterprises took place in the private sector.

Maybe I will not go into the details of why the private sector has the worst record, but it is explained a little bit in the paper. Both in the public and private sectors, the large enterprises are less of a problem and so the main problem lies with the privately owned factories all across China, be they in the villages or in towns or cities, be they foreign invested or locally invested. And, again, the least offenders are the large-sized high-tech investment joint ventures. Usually they are more mindful about health and safety requirements.

Then in terms of industry sectors, where do the deadliest jobs lie? Well, I think we all know that it is the mining sector, which is definitely the worst offender, especially coal mining. It is quite astonishing to see when, in such a mammoth and supposedly very organized State administration, that actually most of the mines operating in China now are illegal, and that is the problem. But I do not think I will go into mining because Mr. Han's presentation will focus on it.

I would also like to draw your attention a little bit more to the building and construction industry, which has been less reported in the press. I think because, unlike mining, the accidents there are less spectacular, so they do not get reported so often, but actually the situation in this sector is very bad. The problem again is that all the construction workers are migrant workers from rural villages, and they have almost no protection, no security, and no visibility in the cities. And of course, other than accidents, there are also the hazards of the long-term and invisible exposure to toxic substances like dust and asbestos, which lead to deadly long-term illnesses.

Dangerous sectors other than construction include the fireworks manufacturing industry. Fireworks factories are very often located in small villages—indeed they are village enterprises, and they operate illegally or quasi-legally. The worst problem in this sector is that quite often very young children work in these factories, because a lot of them are almost like a family or village workshop.

I would also like to draw your attention to the situation of China's farmers, on which very little reporting has been published. Because of restructuring in the farming and agricultural sector, farmers have been using a growing amount of pesticides and chemicals. These pesticides are almost always highly toxic and legally banned, but nonetheless they are widely used and unregulated. And I would say that hardly any farmer receives any training or information about how to handle these pesticides safely. But a key problem is that there is not really any body of epidemiological data to identify or to locate specific problem areas.

Then last, looking at whether the worst offenders are concentrated in certain geographical regions, I would argue that, whether an industry is located in the rich southeast or in the poor hinterland of north and west China, all are bad offenders.

Since I have only 1 minute left, I think I will skip the analysis about why the rules are not implemented. I will go on to my recommendations. I think the main problem of non-implementation of health and safety rules in China is that there is a deadlock of what I would call a triangle of interests between, on one side, the employers and the local officials, and, on a second side end, the central authorities, and the workers on the third side. I believe that the central authorities are genuine when they say they want to improve health and safety, but somehow their directives and laws do not get implemented. And of course the victims are the workers.

Now, I would suggest that we have to find a way to open up the deadlock in this triangle of interests, and that the only way is to introduce more interests, and also to strengthen the different interests of employers and employees, and also strengthen civil society in China in terms of the press, the NGOs, the legal profession, and academia. So the focus of reform must be on this aspect rather than on improving the government machinery.

Thank you.

[The prepared statement of Ms. Leung appears in the appendix.]

Mr. FOARDE. Thank you very much. Ten minutes is not a long time, but we hope to pick up on some of the themes you raised in the presentation during the question and answer session. Mr. Han Dongfang, please.

STATEMENT OF HAN DONGFANG, DIRECTOR, CHINA LABOR BULLETIN, HONG KONG SAR, CHINA

Mr. HAN. Thank you. I will try not to allow you to raise that paper! As Dr. Leung has just said, a lot of laws have been passed in China and the government has done quite a lot of things, particularly the central government. I do not need to review how bad the Chinese health and safety situation is; I do not need to repeat information that is widely available and understood. Just to cite one figure from the end of October, there was a report in the Ta Kung Daily in Hong Kong saying that work-related deaths from January to September this year total nearly 100,000 people, with the worst sector being mining, including coal mining and other mining. This situation is very serious, but what causes this high death rate? Dr. Leung has already answered this question very clearly, but I want to quote one government official's speech on July 7, 2002. Mr. Wang, the head of the State Administration of

Work Safety said very clearly that there are three principle causes of mining enterprise health and safety problems: not enough investment, not enough air circulation, and third, despite the high level of methane gas in coal mines, there is no automatic alarm system. A fourth problem is that there is no preparatory work before the miners go down to do their work underground. The official also suggested that the only way to resolve the problem is by the rule of law, to use the law to enforce the law. This is very clear, and I absolutely agree with Mr. Wang, the head of the government body.

What are the traditional ways that the Chinese Government is monitoring or managing health and safety? One method is through propaganda, from the top down. Another is if they find any problem, they shut down the coal mine. Third, if a state-owned enterprise cannot pass the standard, it cannot restart again. Fourth, central authorities have said that they would like the local government to do more monitoring.

But how effective is the traditional way of managing these issues? The top down way to monitoring and managing health and safety issues? What is the result? Let us see. From March of this year, the government decided that June would be the "Health and Safety Month." In May, there were 400 people killed in coal mines, and in June, the "Health and Safety Month," there were 449 deaths in coal mines, and 1 month afterwards, in July, there were 482 miners killed. So that is the result. It is very clear. It is a top-down method, which cannot really make things happen. Particularly in June, the "Health and Safety Month," there was a big coal mine explosion in the northeast, in Jixi, Heilongjiang, which killed 115 miners. That is exactly 1 day after the mine passed the safety exam from the State Council, so that was a big joke. Even the People's Daily reported that both the Heilongjiang provincial bureau and the Jixi bureau director of the State Administration of Work Safety, said, "after we examined everything, that is it. We did our work and we asked them to stop and they did not stop. We cannot do anything." So it is quite obvious that the government, particularly the high-level officials of the central government, have done almost everything they could but they could not stop this disaster.

So we can see that there is a big part which is missing, which is the involvement of the workers themselves. We know that the workers are the group of people being hurt most by the bad health and safety situation, but it is obvious that the top-down way of managing does not allow the workers to get involved. That is really is the key issue, and therefore my recommendation is that there must be a way to allow the Chinese workers, particularly those workers who are working underground in the mines, to find a way to get involved in this process. I suggest a workers' health and safety committee. That committee should be elected and managed by the workers themselves. All the committee members should be workers. The workers know best how badly they will be hurt if there is an explosion or some kind of a collapse.

People will ask if there is any legal foundation for these workers' health and safety committees. Yes, just a few days ago in the newly passed Work Safety Law there are several articles which say the

workers should be deeply involved in health and safety issues, so we can find the legal foundation for this type of committee.

Some people will ask about the union's role, but I would say that because China's trade union is political, this point is very sensitive. If you push that official union to do more to represent the workers, that sounds like the American Government or some overseas people trying to change the nature of the Chinese official union. I would say that this approach is too sensitive. It sounds like some sort of political challenge. So I would recommend to go to something else rather than to challenge the trade union system. And there is a way, which is contained in an official document from the State Administration of Work Safety that was released last year, which says that the office of this Administration is the only office that can cooperate with foreign bodies on health and safety. So that is regulated already. That office is the only one.

I would also remind people that, for workplace health and safety, the work has to be done at the lowest level, in the workplace. No more in the meeting rooms in the universities, no more in the meeting rooms of the Labor Bureau, no more in the meeting rooms of the provincial Labor bureaus, but this work will have to be done in the workplace through these workers' health and safety committees.

So, this sort of committee, if we can set it up, I really believe that there will be a very, very good result on this and these workers can, for the first time, raise the issue whenever they feel there are dangers. And, for example, according to the new Work Safety Law, they can stop work and refuse to continue to work in a dangerous situation. So the committee really can give the workers confidence to use the law to protect themselves.

When they have more collective confidence, the workers' committee will also be able to force the lower level management from the coal mine to buy insurance for the workers. And that will really get the insurance companies involved in this issue, because the insurance company has to go and check on the health and safety situation. If it is too bad, they will not insure this coal mine, and you will then bring another party's influence into the health and safety issue—an insurance company. It works.

And as Dr. Leung mentioned the firecrackers industry, and I would also recommend the same things, which is a workers' health and safety committee. So that is my recommendation. Unfortunately you raised that paper!

[The prepared statement of Mr. Han appears in the appendix.]

Mr. FOARDE. Mr. Han, thank you very much, and we will pick up on all the very interesting things that you just articulated a bit later after we have heard from Mr. Chan Ka-wai. Mr. Chan?

STATEMENT OF CHAN KA-WAI, ASSOCIATE DIRECTOR, HONG KONG CHRISTIAN INDUSTRIAL COMMITTEE, HONG KONG SAR, CHINA

Mr. CHAN. Thank you very much. Good morning everybody. We have just heard from my colleagues a macro description, and I will go to the micro way, talking about the enterprise level, especially in the foreign-owned enterprises in China.

My presentation is already in written form so I will not repeat it, but what I want to say is that basically American investment in China now ranks around No. 4, and if you count those from Hong Kong, Taiwan, Macau, they are Nos. 1, 2, and 3. Half of these companies, or 70 percent of them basically, are working for American brands, so you can say that half of the foreign investment in China basically is from the United States or so-called U.S.-related investment. So you will see how American investment has an important impact on the workers in China.

You can see that, if you are just talking about the number of workers in the foreign-funded enterprises, it is very small, around 6.5 million. This is around 3 percent of the total working population in cities in China. But that does not include those so-called joint ventures from local investment and other Hong Kong and Taiwanese investment, so the figure basically is under-estimated.

But anyway, I have put two questions, or two problems in my paper. However, it does not mean that the foreign-funded enterprises only have two problems on health and safety. They have a lot more problems than just two—for example fire problems, illegal structures, or illegal architecture in their buildings. But what I want to say here is that these problems are more invisible. What Mr. Han mentioned, the mining problem basically is very visible. Everyone knows about an explosion and how many people have died, but there are other problems, which are also serious but invisible, for example the chemicals or occupational diseases or the overtime problems.

You can see from the data, in China now there are more than 16 million workers working in some kind of toxic or dangerous work in their workshops. Supposedly it should be 10 million workers who should have a regular health check but only one third of them have done so. Two-thirds have not had any physical checkup. And, what is more important, this data does not include the workers working in the so-called township and village enterprises or some kind of so-called individual ownership.

So you see the picture is quite serious. From talking about China, I now turn to one province, Guangdong Province. This is my research area. Basically this province is full of foreign-funded enterprises, and most of the workers working there are what we call farmer-workers, or Mingong in Mandarin. That means they come from the village. They are not entitled to stay in or enjoy any social benefits in the city, basically because they are initially farmers.

You can see that there are around 10 million workers who are exposed to toxic or dangerous work every day when they work in the workshops. But, according to the Guangdong Government investigation this year, around 95 percent of the foreign-funded enterprises violated the health and safety laws or regulations. They did not have an occupational health and safety law at that time. At that time, they only had a local regulation. And also more importantly, for occupational diseases the reporting rate is very low. They said the underreporting rate is 120 percent of the reporting rate. That is, if you report one case, there will be 2.4 cases that already happened. So you can see that the underreporting rate is much higher than the reporting rate.

You see how many work specialists there are to monitor the health and safety. At the factory level in Guangdong, I think there are only one thousand specialists. Each one is responsible for one thousand enterprises, and each one is responsible for 10,000 workers, so you can imagine how little they can monitor the enterprises. And finally, more than half of the factories in the Guangdong area have not yet been examined, even from the date of commencement of their business up to now.

Occupational diseases are so serious because they are invisible. Most of the workers will not associate their problem, especially a health problem, with the chemicals to which they are exposed every day. Finally, when they have a problem, they go and see a doctor. Their health is getting worse, so they go back to their hometown and it seems nothing has happened. But this is a big problem. This is not like a fire. When a fire happens everyone knows, but occupational diseases are so invisible that no one knows. If you talk to workers—and we have interviewed some of the workers, not a very big sample, but we interviewed 22 workers in eight factories in the coloring departments—they are exposed to toxic chemicals every day. None of them could name the chemicals they use. None of them. Talking to more than 100 workers about the health and safety regulations, only 1 percent of the interviewed workers said they knew about occupational health and safety regulations. Talking about the human health regulation, talking about the young workers regulation, sorry, none of them know. So you will see how serious the problem is.

The second issue is overtime. You know I think most of the big problem about overtime is not only that workers work overtime and only get very low pay, but overtime is also a big problem because the workers are exposed for a longer time to the chemicals, and thus their work is more dangerous or there is a higher exposure to dangerous machinery. In Shenzhen now, it is said that there are 50,000 workers with fingers or arms or legs cut. But those cases will not be prosecuted, or possibly only one or two cases. Even if a case does arise, maybe the worker will get very meager compensation and he will go home. So that is a big problem.

Now, according to our research last year on the overtime situation, even up to this year we found that in some factories in the toy industry, especially in the high season, the workers will be forced to work 80 to 100 hours a week. Supposedly according to the law, it should be 40 hours a week, and then 9 hours overtime on average a week. That means it should be 49 hours a week. So you see the big difference.

I only discuss these two questions because this aspect is related to a more fundamental problem regarding the foreign-funded enterprises, especially as most of them are foreign brands. The companies claim they have a code of conduct and they will press their manufacturer to follow the code of conduct, to follow the labor laws in China, to respect and protect the worker's rights. But the big problem is who controls the pricing, who controls the delivery time? Accordingly to our research last year, most of the brands in the toy factories ask for very low pricing. The lowest labor cost share is 0.4 percent of the cost of the toy in the market place. That is the market price. And then the shortest delivery, lead-time, is within 2

weeks the manufacture should produce more than 10,000 pieces of toys. How can they follow the code of conduct? If they get such a low price, there is definitely no money to install health and safety equipment. If they require such a short order lead-time, there is no way but to order the workers to work overtime. Therefore the only way we address this problem is to go back to monitoring of the foreign-funded enterprise, and especially work on how to get the workers involved. That is more important finally, having the workers involved, because, as Mr. Han mentioned, workers basically know the factory best. But they have no say in its operation. So on that issue, how we can talk about monitoring the foreign-funded enterprises? And we are also talking about how to get more involvement by the workers.

Thank you very much.

[The prepared statement of Mr. Chan appears in the appendix.]

Mr. FOARDE. Thank you very much, Mr. Chan. We are now going to proceed as we usually do to a question and answer session. Since there are only four of us and we want the opportunity for each of you to expand a bit upon your comments on each of the issues that we ask you about, normally we only go for 5 minutes per staff member, but I think we will go for 10 if you have that many questions to ask. So I will begin, but I will also keep track of my own time.

We can address questions to the whole panel, or to each panelist individually, but if you have views that you would like to express, please go ahead and jump in when your fellow panelist is finished.

Ms. Leung, I would ask you what can be done practically to improve enforcement of the existing workplace health and safety laws, particularly the new laws? And is there a role for projects funded by overseas foundations or government-to-government programs?

Ms. LEUNG. Thank you. Yes, the enforcement of the laws, I am glad to have the opportunity to explain a little bit more about that, how we can try to strengthen more the key actors and more forces of interest in the whole game. So, if I can, I would like to go a little bit into what can be done about the different actors in the game.

We know that the employers are the worst offenders, and I think they would need a lot of disincentives, deterrents. So more stringent and heavy penalties will help create that deterrence. The new law goes a little bit further in this direction, but I think it should go yet a little bit further. And this goal will only be helped by an adequate and sound litigation process, which again we can go on to discuss later.

And then awareness and capacity training would help. At the moment, there is an embryonic formation of some industry or chambers of commerce in China. I think if these are better organized and can have better facilities, they can provide the necessary research and program support on health and safety. And maybe "best practice" awards given by these associations can again push things in the right direction.

On the employee side, I think a lot of work needs to be done to enable the employees to form an interest group and represent their interests. And all the health and safety literature and analyses and solutions have said there must be workers' participation. There has

to be. And it is essential to you are building a culture of health and safety and all that. But at the moment, the workers are given hardly any space, and so political intervention is needed a little bit. But more technically, the focus must be on more training for the workers, how they can participate.

The new law actually protects the rights of the employees. There are eight rights of the employees. I will not go into the details because these rights are listed in my paper here. And the press, I think, can easily and most readily act as an actor, which probably can be most effective. It takes the least investment, because actually the press in China has been playing a crucial and helpful role in the last few years in exposing and reporting various workplace disasters. Without their reporting, I think, we would not be here even talking about the various new government institutions.

Now, the Chinese press has met a lot of obstacles from local interests, from local employers, and from local governments. They have been stopped from reporting on some subjects, but sometimes they get a little bit of backing from the central government in Beijing. I think strengthening the culture of investigative reporting by the press would definitely help; one way might be for foreign agencies to give out some high profile press awards for Chinese journalists on health and safety. At the same time, there has to be a political environment for the press to be able to take up independent investigative reporting.

And NGOs will play an indispensable role, I would say, and this aspect is already a promising entry point, because in the past few years there has been a slow but steady growth of NGOs in China. A few of them are working on workplace health and safety, so supporting this NGO community in this direction will help.

Now, I would really like to focus, especially for foreign business and governments, on the legal and litigation insurance companies. The new law requires that all work units must take out industrial injury insurance. At the same time the insurance industry is being slowly privatized, and even foreign companies can operate in this sector. Usually the insurance sector in the United States and Europe actually has a positive role in health and safety culture, because it is in their interest to make sure that their clients do not make claims for compensation. So I definitely think it is worthwhile putting resources into engaging the insurance sector.

And then litigation, because at the moment, the workers are the victims. They get very little legal support when they want to file a lawsuit against employers. And I think that increasing this type of support, maybe by having a pool of lawyers and perhaps even litigation funds would help in this direction.

And last, I would talk about academia. I have come upon quite a few academic studies on these problems but there is not enough good academic research. And I think giving out scholarships on health and safety would help develop this type of research.

Mr. FOARDE. Very useful comments, thank you very much. Mr. Han, I would ask you, you were very eloquent about the problems in the mining industry in China. Are there similar workplace safety problems of the same magnitude in the other extractive industries such as oil and gas, or are they greater or less than the mining industry?

Mr. HAN. I put more of my time into monitoring firecrackers, as I mentioned. While I also mentioned coal mining, I would really recommend a focus on the fireworks industry, because this industry really is dangerous, not only for workers but children. Particularly in the Provinces of Shaanxi and Hunan, they have had this tradition of family fireworks factories for more than 200 years. They are doing it on a family basis, and not only do family members make the products in their home, but the whole neighborhood gets involved. Then it is much more difficult to control the health and safety of this type of enterprise.

I really believe that a major step will have been taken if this coal mining workers' health and safety committee can be set up. I am not asking the United States Government to take care of everything in China—it is impossible—what I am trying to say is for U.S. donors to set up some sort of pilot program. For example, I would say in Wuhan and Guizhou there are very small coal mines, and sometimes each coal mine has only between 20 and 50 miners. And if you can succeed in these smaller coal mines, that experience of successful workers' health and safety committees can be passed on to the firecracker industry, because the workers' health and safety committee is not really based on one or two individual coal mine enterprises. You really have to have, for example, a county level or regional level workers' committee, and each coal mine you would have two members to join this regional committee, and these two members would have to be elected by that small mine's workers.

So if you have these regional organizations, if you have a meeting every month or two, everybody can bring their problems. If miners from the small coal mines can really set up useful meetings and discuss and publicize what happened last month, and plan for what they can do in the future, this experience can really transfer to the firecracker industry. And that type of committee can involve not only family members, I mean, those people who are working on making firecrackers, but also can involve the whole neighborhood. And even though they really might not be producing any fireworks from their homes, their neighbor is doing that, and they are in danger. They cannot really do anything if there is no opportunity for them to be involved in the solution to this problem.

So I will say that this regional workers' health and safety committee, when it comes to the firecracker sector, could be a committee of workers and owners and small producers and also the representatives of residents.

Mr. FOARDE. Thank you very much. My time is up, and so I am delighted to turn the floor over to my colleague, Lary Brown.

Mr. BROWN. Mr. Chan in particular mentioned the magnitude of United States investment in China. I would like to ask who exactly are the outside groups besides civil society in China that have some leverage to bring about improvement in health and safety in China? And what is it that they should be doing that they currently are not?

Mr. CHAN. I think that there are few different levels of such a kind at present. It is certain that we need some kind of pressure from consumers. Consumers, including students, have an obligation

and they should put pressure on the companies, and perhaps have input into their planning and try to foster cooperation.

The second level is the shareholder. Certainly now there are some churches or even governments, at the county or city level that also have a certain code or regulation for their investment. If they find a corporation that does not respect the labor rights or chooses to ignore labor issues, they will encourage the corporation to follow this code of labor standards. So on that basis one party is the shareholder.

A third party is some NGOs in south China and how they monitor the factories. For example, CIC monitors the foreign-funded enterprises in China, especially in Guangdong. But more importantly for me, I think, is how to make the workers' voice heard. That is more important. It is not only heard by the public. It is also the voice coming up in workplace. So what the Christian Industrial Committee has done over the past 2 years is to try to negotiate with the corporations and also at factory level to have some kind of health and safety training. The training is not only to impart technical knowledge. Everyone can do that, especially by profession. What is more important is how workers can get involved in the monitoring of the factory, especially the health and safety committee.

We have now done more than seven factories, including some in the toy and the footwear industries. Last week, we met representatives of the Hong Kong toy industry. One of the agenda items was that they will propose that every member factory will try to set up a health and safety committee composed of workers, and the workers will have a say and a role in the monitoring of the factory. Basically this is also what was proposed by the Chinese Government. Now for the health and safety issue in China, a new term has come up, which we call "the occupational health and safety management system." In the past, this kind of management system was basically limited to factory management. They were especially responsible for the health and safety, equipment, things like that, or they have a health and safety officer. But now the new concept which has been raised is that workers must also be involved. So the Chinese Government is also thinking about how to set up the mechanism in which workers can be involved. They have their representative there and then to also monitor the health and safety issues and facilitate solutions.

I think that this activity is legally allowed, and also practically I think the some of this is already a habit, and even at the industry level some industries also want to promote it, so I think this is the time that we can talk much more about how we can set up such a mechanism, especially in the foreign-funded enterprises.

Mr. BROWN. I have one other question. American consumers, as you have mentioned, are increasingly concerned about the conditions under which the products that they buy are produced. What would you recommend their response should be when they see "made in China" products on the store shelves?

Mr. CHAN. Well, I think that goes back to the two issues I mentioned earlier. If the U.S. corporations, especially those involved in investment, really want to listen to their consumers on health and safety issues, they should take up more responsibility to tell the

manufacturer how to take such issues seriously. The big problem now, even if you talk to the manufacturers from Taiwan and Hong Kong, is that they complain that they have no weight, because the code of conduct basically shifts the burden totally onto the manufacturer. I have always said that the code of conduct is voluntary for brand names, but it is legally binding on the manufacturer on the basis of the contract. So if they cannot follow it, they will be punished. But in fact they cannot follow it because of the pricing system, the lead-time delivery problem. So I think that we must go back to examine the problems in such a system, the mechanism, how much cooperation, especially American investment, they would like to share the burdens of the code of conduct. It is quite certain that it depends on the cost, and then how they can help the manufacturer. At that level, I think there are still a lot of possibilities that we can do that.

Mr. HAN. Can I say something about this? I would say that a consumer campaign on this issue would be very easy to be misleading. As a trade unionist from China, I do not think that boycotting Chinese products is a good idea if the goal is to achieve labor rights in China, that is, to help Chinese workers. Basically, a boycott will reduce job opportunities for workers. I do not really think that this approach works, but it works at some level, which is by creating some sort of awareness in society, and get people to hear about this, but not really stop buying Chinese products, which really hurts the Chinese workers. Once you lose a job, what else do you have?

So I keep saying that, including a code of conduct, monitoring ideas and their systems, I keep asking the question "are we talking about monitoring the animal rights or labor rights?" They are very different. Animal rights should be for those animals that cannot help themselves. Human beings can go and help themselves, so that is one way to look at this question. Another way, if we are talking about labor rights, is that we have to assume that the workers in China and anywhere can help themselves. What we need to do is link them up and help them a little bit and push them, and they will be able to take care of their own problems. And that is why I said that with a boycott and a consumer campaign, we have to be very, very careful, because we do not want to see that campaign hurt Chinese workers, but rather to help them.

Ms. LEUNG. Thank you. Just a point to add is that the choice of the consumers, and if they care about how products are being produced, then they should look for what are the "preferred products." There is always more competition in the market, and companies are always looking for an edge over their competitors, and I think this is where social standards come in. And if companies can actually promote their adherence to these standards as the selling point, that they are producing socially friendly or environmentally friendly products in China. I think this should be a policy direction, to give the consumers a better choice.

Mr. CHAN. I think, though, that the initial issue is to set up the kind of agenda that the consumer wants. If they just want to punish the corporation, that is one approach, or they may prefer to push the corporation and encourage the corporation to set up a more positive mechanism in which workers can be involved, and

also even involve other stakeholders to improve the working conditions. For example, when the CIC fight the corporations, we will ask them “if you just cut and run we will not give any information to you. If you want to do something really to improve the working conditions, OK, let us sit down and talk about how to set up the mechanism.” So now I think that even when we talk to the U.S. partners, the consumer groups, or student groups, they all realize that they should not just ask, “if you do not do that we will cut.” Rather, they should encourage the corporations to set up some more positive mechanisms. I think that is be the genuine need that we should address.

Mr. FOARDE. We will move on to Susan Weld, please.

Ms. WELD. Thanks, John. I am part of the Commission’s law clique, and so I am interested in the rule of law aspects of this question. What are the specific tools that an individual worker or a workers’ committee could use to improve the situation? For example, there is an Administrative Litigation Law. What is the success of people trying to use the Administrative Litigation Law in the health and safety context? Perhaps not under this new law, but previously existing workers’ safety laws and so on? So that is one question.

And the other question is whether or not there is a possibility of getting any kind of injunctive relief? And what about the use of class actions? Are any of these things tools that can now be used, or could they be built up into a form in which they could be used? I guess I will ask Ms. Leung to start, and if it is OK then go down the road with any other additional ideas.

Ms. LEUNG. Yes, thank you. Even though I must make a disclaimer—I am not a legal expert—I am more of a political scientist! Yes, there have been already a lot of other laws existing before these new laws were enacted this year. The Labor Law, for a start, has a clause already saying that the union has the right to remove or to help restore the workers from very dangerous work places. The Labor Law also covers compensation. There have been a lot of lawsuits filed by the workers. I do not think they generally use the Administrative Litigation Law. They usually come under the Labor Codes. The problem is that the compensation is very little, even when the workers succeed. And, first of all, if the workers can find people to help them pursue these legal actions.

In the past, I think, sometimes the official unions have helped employees file cases. Sometimes not, and so sometimes the workers, when they have nobody to help them, turn to the Labor Bureau help the them file lawsuits against enterprises. But a frequent problem is that the workers are not even registered or recorded in the official workforce because they are migrants, so they really have very little recourse to legal action. Another possibility for these workers is consulting lawyers in private law practice, but there have been a lot of problems, because the lawyers see very little incentive to get into this kind of litigation because migrants cannot pay very much in legal fees. Some lawyers try to provide subsidized services, for example, the very high profile cases of this lawyer called Zhou Litai, who has run into political problems because he has advocated for workers.

But there have been a couple of interesting precedent cases. I do not know whether they can be called class actions. At the time, I thought they might be but then nothing happened. I think either a year or a year and a half ago, a group of workers, I think in Jiangsu, succeeded in filing a lawsuit and then won the suit and claimed compensation from their employers for injuries. And the employers happened to be the local government, and the compensation was a very big sum. At the time, people said this was the first time ever that the local authorities were found legally responsible and had to pay compensation. But then I have not come upon many similar cases. But maybe that can be the future in China, if more lawyers would take up these health and safety lawsuits, and I think that case will definitely be a helpful precedent.

The new Work Safety Law actually says that the workers have the right to information, to put forward recommendations, and to expose and litigate against violations, to refuse to continue operations, to emergency departure, and to legal compensation. So these rights are very clearly stipulated in the new Work Safety Law, and I think this should be the focus of future legal practice in this field.

Mr. HAN. Dr. Leung has already mentioned the new Work Safety Law, and there are several articles contained in it—Article 19, Article 45, Article 46, Article 47 and Article 50—which put together say that any manufacturing enterprise and mining enterprise should set up a health and safety work group. In addition, the workers also have the right to understand the dangers and the mechanics of whatever equipment that they are using. They can also refuse to work in a dangerous place, in an emergency situation, they can choose to get away from the danger. They also have the right to receive health and safety training.

But the Labor Law and the Trade Union Law also say that the trade union should do that work. So now the question is—again I have to go back to my point—who are the people that are really interested in acting to enforce the law, to pick up the law and use it? It should be the workers, because they are the ones being hurt, but now the reality is that the workers are not doing it. Why? Because they do not trust the law, because the law in China is for ruling people and not protecting them. Very often when I receive telephone calls from Chinese workers, they always complain and complain and complain, saying that the laws are useless. And my response to them is, “What about you? Have you done anything as a worker and as a victim or potential victim?” So it sounds not very nice to them, but my idea is to find whatever way we can to encourage the workers to have more confidence in the law and to try to get together and make the law work for them.

And, as I mentioned a little bit before, why we are talking here is because we want to reduce the dangers in the workplace. We want to have more workers saved from this “death penalty.” And what we want to do is to achieve this goal without making any trouble. That is why I especially mentioned that the trade union law works, but if you push the official trade union in that way, it will make them difficult and also make everything impossible to do. And that is why I recommend the creation of workers’ health and safety committees. If we can set this up in some of these selected

coal mines, then that committee can really do a lot of work that the trade union cannot do, and even do some work for the trade union and avoid embarrassing them.

In December 2001, the Chinese central government passed a regulation that calls for a health and safety management system guidance paper, and also really encouraged the workers to get involved. That is under the ILO principles. So that regulation clearly shows that at least central government is willing to do something, and there is a legal foundation to do it. The government is willing to do that, and now the question is whether or not the government has resources to do it. So if there were any external resources, which could be put in to help them to start this process, I would say the central government would be really happy to see that.

Mr. FOARDE. Mr. Chan, do you have a comment on that question? Can I ask you to hold that to the end and we will go to my colleague, Ms. Ko, to ask some questions and then we will come back to your comment right at the very end, if you please.

Ms. KO. Actually I would like to start by allowing Mr. Chan to go ahead and answer this question.

Mr. CHAN. Thank you, Ms. Ko. I think on the legal framework, I am not a legal expert, but because our organization has also organized a kind of legal center in China for health and safety issues and has also been working with the lawyer Zhou Litai, we found that on the legal framework, it is not only the law itself that is important, but it also involves legal procedure and also some kinds of provincial problems. The first problem concerning the legal procedure is the litigation problem. Ninety-three percent of the labor disputes which included health and safety issues have been settled at the mediation or arbitration level. And also according to the law, if the case does not first go through the arbitration process, it cannot go to court. So that means that if I am the guy who rejects the case at arbitration level, the case cannot be moved to the court. A lot of workers complain that the local government does not want to threaten the foreign investment, because if more cases come to court, what will happen is that they will reject the cases, and finally the case cannot go up to the court. So the problem is the legal procedure itself. That means, according to the law, that the workers cannot go to court directly. They must go through the arbitration or the arbitration officer, who can say, "I do not want to deal with your case, so I sign a piece of paper and you can go to court directly." If they do not have such permission, the workers cannot go to the court, so I think one of the big problems is the arbitration requirement.

The second issue is about the legal procedures for worker health and safety issues. One of the jokes we often make is that if the factory has no insurance against worker injuries, the case will be finished within 2 years, because the court will order the company to surrender. But if they have insurance, because the insurance is centralized at the central government level—it is called the "social interest group insurance"—they will say, "Oh, this is government money." And they will appeal again and again, and the case will not be finished for 5 years. So how can you ask one injured worker, especially if he is not a local worker and he has to go back to his

home town, to endure such a long time for a lawsuit? So the legal procedure is a big problem, especially for migrant workers.

The only thing that I think we can do to strengthen the legal position is to have a labor court, especially on the labor disputes or other matters. The second issue is how to strength the legal system. Basically, at the provincial level the provincial government supposedly has a legal aid program. But if you ask how many cases they accepted, they will say "Sorry, very few." So I think at that level we are not only talking about the law itself, but we are talking about the legal procedure. And for some compensation cases the procedure also very stupid. This is because of the provincial protection problem. For compensation, if one is talking about needing some kind of artificial limb, something like that, the court will not ask the company or the social interest group, to pay out once and for all because they need to change it theoretically. They will not ask them at one time to pay all of the money. They will ask that you pay periodically. But when the injured worker is not from Guangdong, you must ask the worker to go back to Guangdong to change his artificial limb. "I am from Sichuan. I am already disabled, you ask me to come from Sichuan, so far to go back to Guangdong and then to change the artificial limb, and then claim back the money." So you see how stupid it is. That is also related to protectionism in the different provinces.

Ms. KO. I would like to follow up on the discussion about the industrial association issues. Mr. Chan mentioned that the toy industry industrial association needs to make more efforts in this area of workplace safety. I was wondering if there are any other industrial associations working on such issues—how strong are they, what is their relationship with the local governments, and whether they have any influence to push local governments in the direction of forming worker committees or otherwise take steps to improve worker safety?

Mr. CHAN. I should say that anyone wanting to do any kind of labor issue is stupid in China. For example, even lawyers have problems with labor cases. That is why so few lawyers want to do health and safety because certainly you will antagonize the local government and businesses, and finally you will lose your business in other areas. So that is why there are so few lawyers working on these cases.

But it is very clear that more and more individuals or small groups are coming up for the workers throughout the country. But I should note that they are more individual and they are not so well organized. From a positive point of view, you can see that there are fewer government cadres. Even though they are government-backed, there are more individual members and many fewer government cadres. So that is a kind of new civil force—I cannot yet call it "civil society!"

One of the key issues, which we are also thinking about, is how we can strengthen the network among such people. They are not so-called independent NGOs, but they are concerned about labor issues. They also want to do something good, to work at lobbying the government, or of to provide some kind of education. I think one very important issue is how we can strengthen such a civil force, and also help it move from unorganized to, well, more formal-

ized, not organized, more formalized. Up to now, it has not been that easy to do. It is difficult because they come from different centers and they have different agendas, but I would say that in the past 3 or 4 years certainly there are more and more such people from different centers coming up. Maybe some of their work is for the benefit of their own business, but more importantly for me there are fewer government cadres.

Ms. LEUNG. Yes, if I can, I would like to take your point further. I think the existing situation is there are not many chambers of commerce or industrial sectorial associations, which really work or focus on health and safety. That is exactly where the new initiative should lie. For example the American Chamber of Commerce should consider taking up a health and safety strategy and program for American companies, but again not only the American companies but also the suppliers and sub-contractors of all the American firms. And so I would say this is definitely a direction, which requires work.

When I was in Beijing in August with a European mission, I learned that actually there was a kind of informal chamber of foreign companies, mainly European but I think the American companies were also there in Beijing. And they meet regularly. Now, if there were this kind of chamber or association of foreign companies, Beijing would be their headquarters and so they would be the right body and right foreigners to really deliberate a strategy on health and safety and also to recommend programs for individual companies.

Mr. FOARDE. Thanks to my colleagues for great questions, and to our panelists for great answers. We are fast closing in on the end of our roundtable this morning, but we do have time for one brief comment from each of you to wrap up, if you like. Perhaps we could begin with Mr. Chan, if you want to?

Mr. CHAN. I think we were talking about, especially how to make the foreign-funded enterprises follow the labor standard. I think there are two issues we must address. One is that they should take up more corporate responsibility especially on the pricing and also on the ordering system. The second issue is how to get workers involved in the monitoring. You can imagine how we can monitor the factory once a month, twice a month. Usually a lot of the companies are only monitored once a year. So the only way that true monitoring can become effective is if it comes from the workers. If they can have a say, if there is some kind of a mechanism inside the factory, the workers can monitor. I think that is more important and, moreover, it is legally allowed.

Mr. HAN. Thank you. I would say first that there is a great opportunity in China now, especially when we are faced with the very bad health and safety situation. Definitely the central government would like to act, but the local government has an interest in this matter, for instance, frequently being co-opted against acting on this issue. And the enterprises that are cooperating with the local governments make the situation very bad. So, because we want to improve the health and safety problems and help the Chinese workers, we have to think how based on this reality we can use the central government's willingness to act against the local governments' and enterprises' bad behavior. That is the first point.

The second issue, I would say, is to use the laws. How to use the laws? For example, in a courtroom you can have a good judge, you can have a good prosecutor, and you can have good lawyers, but that is not enough. You have to have clients. So that is why I said there is a need to create the workers' health and safety committees. The idea is to create the clients to require the rule of law, and without clients we cannot really set up an effective courtroom.

And third, I would say stop putting a huge amount of money into inviting the government officials and the so-called experts from China to go to the United States for a free trip. That is really a waste of money, and even if you provide the money it is a shame, I would say, when it does not help the Chinese workers at all. And I would say whatever money there is to improve the workers' health and safety situation in China, it should be done inside the workplace. No more meeting rooms, no more conference rooms, and no more activities in offices. Thanks.

Ms. LEUNG. Thank you. I would like to focus my last comment on the role of foreign governments, overseas governments, or overseas bodies. A strategy of intervention, I would suggest, best lies in local initiatives because that will gather the strength. The strategy should first target the worst problems, but more important is to identify what are the most effective entry points. I would say the most effective entry points are in the companies, be it the investors, the investing companies, or for all the brand names, the products which target the consumer market, but also the companies, the insurance companies and also the legal profession.

And last, I think that maybe, because there is only very limited spectrum of ways that foreign bodies can exercise their influence, establishing flagships of best practices can be a most effective way for the outside players. Thank you.

Mr. FOARDE. On behalf of Senator Max Baucus of Montana, the chairman of the Congressional-Executive Commission on China, and Congressman Doug Bereuter of Nebraska, co-chairman, thanks to our three panelists for a rich and very highly focused set of presentations this morning. You have helped us to learn a lot, and I hope we can always keep up the contact and dialog to learn more about workplace safety issues in China as your views evolve.

I would also like to thank my colleague Lary Brown for setting up this roundtable this morning here in Hong Kong, with the capable assistance of Pat Dyson from the Solidarity Center. Thank you very much, Pat.

Again, thank you all for coming to attend this morning. Thanks to the FCC for hosting us. The papers that our panelists submitted should be up on our Web site, if not today in Washington, then in the next couple of days. The Web site is www.cecc.gov, and a full transcript of this morning's proceedings will be available on the Web site in about 5 or 6 weeks. We get the transcript back and then give our panelists a chance to correct any errors, and when we get it back, then we put it on the Web site.

With that, thank you again, and we will call this roundtable closed for this morning. Thank you.

[Whereupon at 11:27 a.m. the roundtable was adjourned.]

A P P E N D I X

PREPARED STATEMENTS

PREPARED STATEMENT OF WING-YUE TRINI LEUNG

NOVEMBER 8, 2002

WHAT CAN BE DONE FOR THE LARGEST BUT DEADLIEST MANUFACTURING CENTER IN THE WORLD?

[Summary notes for discussion, presented by Wing-yue Trini Leung, a researcher on labour and politics in China. Contact address: trinihk@hotmail.com.]

As China achieves spectacular rates of economic growth during the last decades of the 20th century, its health and safety record has made nearly as sensational a leap, but in the opposite direction. Industrial and mining injuries, fatalities and occupational diseases have all risen at a rate surpassing the near double-digit annual growth rate in the economy. It is during the same period that China has become more deeply integrated into the international community and global economy. China at the start of the 21st century is the largest manufacturing center of the world. It is also the deadliest. Alongside the Chinese Government, the international community has been pumping millions of dollars trying to revert this chilling reality.

This paper discusses the problems of improving health and safety at work in China. It argues for a new strategy, departing from the previous emphasis on strengthening official machinery and capacity. Building a sound and mature mechanism for representing plural interests, and a culture of participation would offer more promise for reversing the trend of ever worsening violations of rules and standards in China.

The Current Situation

In 2001, 9,650 fatal incidents of industrial injury killing 11,047 workers (5,670 of whom were miners) were officially recorded. Industrial accidents rose by 27 percent over 2000. The International Labour Organization (ILO) estimates that annual workplace fatality rate in China is 11.1 per 100,000 workers, compared to the rate of 2.19 per 100,000 in the US. Official records of occupational diseases rose by 13 percent in 2001 over 2000 figures to 13,218 cases with 2,352 deaths. And these are only the official records which, like all other official reporting of bad news in China, represents a small fraction of the reality.

A total of 13,218 cases of occupational diseases were recorded by the government in 2001, a rise of 13 percent over the figure in 2000, when 2,352 people died. The government has publicly admitted that "this is only a tip of huge iceberg of health hazards at workplace in China." Fewer than 30 percent of workers who are exposed to dusty environments received health checks for pneumoconiosis.¹ Pneumoconiosis, chemical poisoning and leukaemia are the leading causes of early loss of working ability in China. The high-risk industries for occupational illnesses are coal production, metallurgy, building materials, non-ferrous metals, machinery and chemicals.

The State Administration of Work Safety and the State Administration of Coal Mine Safety were set up by the State Council in 2000, in a central government attempt to rationalize the State machinery of health and safety management. This new organ has galvanized considerable political backing and resources.

The Prevention of Occupational Disease Law was implemented on May 1, 2002.²

The first generic law on health and safety in China, the Work Safety Law (WSL), was finally enacted on 6 July, 2002, and becomes effective on 1 November, 2002. This law is the culmination of over a decade of efforts and resources, from both inside and outside China attempting to provide a legal foundation to address the problem. One week into its effective date, it's not too early to announce that this statute will, just like hundreds of other laws in China such as the Labour Law (1994), become another meaningless document sitting on the shelf while violations go from bad to worse.

The Dangerous Chemicals Handling Directives will also become effective on 15 November, 2002. But this, like numerous other rules, is only an administrative directive from the State Council, and carries even less leverage than statutory law on business and plant operators.

¹ "Occupational illnesses on rise in China," Xinhua News, 04/02/2002.

² "Law to stem occupational diseases," Shanghai Star, 16/05/2002, in <http://www.chinadaily.com.cn/star/2002/0516/fo5-1.html>.

China has not ratified International Labour Conventions (ILC) 155 and 161. The ratification of ILCs would put additional pressure on the government to be held accountable for its performance, and this is badly needed.

As admitted by the Chinese officials, the main stumbling block on H&S does not lie with the institution of laws but rather with the implementation of laws. There are many government decrees and rules, and many more government organs and officials who have existed for decades for the task of enforcing H&S. During the past decade, there has also been a healthy rise in the provision of H&S training and capacity building for various official bodies and personnel. The bulk of the groundwork has been laid, but rules and guidelines continue to be flagrantly breached by employers, local law enforcement officials and, at a different level, the employees. Improvement in H&S will need to tackle this bottleneck.

The Worst Offenders

Some sectors have been identified as the high risk group on H&S record.

OWNERSHIP OF ENTERPRISES: SOE, PIE, FIE, TVE : WHO ARE THE WORST OFFENDERS?

Businesses and manufacturers in China can now be categorized into the public and private sectors on the basis of ownership and control of the enterprises. By this measure, the state-owned enterprises (SOEs) belong to the public sector; while the private and individually owned enterprises (PIEs), foreign-invested enterprises (FIEs) and the township and village enterprises (TVEs) can be grouped under the private sector. About two thirds of the country's 400 million non-agricultural workers are employed in the private sector.

In general SOEs are subject to relatively fewer commercial pressures and hence are under less pressure to skimp on H&S provisions and implement a mean and lean labour regime. Presence of the official machinery, such as the party organs (including the official union), is usually stronger in SOEs, which should help with H&S enforcement. Most workers are employed on a relatively more long-term contract basis and hence have more leverage on the enterprises. Despite all this, however, it is not a rosy picture at the SOEs. Numerous non-implementation, negligence and outright violation of regulations still plague their H&S records. Refusal to provide legally required and adequate compensation to victims of industrial injuries is very common. Under investment and lack of resources also account for poor H&S provisions and training in the SOEs.

But the situation is many times worse in the private sector. Most enterprises are small and medium sized and are situated in towns, villages and suburban counties. They are typically set up and owned or run by one or small handful of local entrepreneurs, often under the auspices of local authorities. Such factories form the back bone of the export-processing industries; many serve as sub-contractors and suppliers to the major MNCs around the world. The plants are set up with minimum planning and investment, for the pursuit of maximised, short-term returns. Nearly all the workers are employed on short-term contracts; many of them are very young migrants from nearby or from the remote countryside. An extremely exploitative and repressive, and often illegal, labour regime is imposed on the workforce. Workers commonly suffer from long working hours, forced overtime, deprivation of rest days and sick leave, low wages (nearly always on piece-rate), arbitrary penalties and dismissals, and denial of collective bargaining rights. H&S features very low in the investment and management priorities of these enterprises, if at all. The local law enforcement officials are usually willing to turn a blind eye to the situation, either because they are bought off or because they see it in their interests to keep the entrepreneurs and investors happy.

According to the government, about 74 per cent of serious accidents in industrial and mining enterprises occurred in the private sector.³

In general, both in the public and private sectors, large enterprises which have over 3,000 employees are subject to more stringent official supervision and are better positioned to provide better H&S regimes. Large hi-tech joint-ventures with foreign MNCs are also more vigilant about H&S requirements.

SECTORAL: AGRICULTURAL, INDUSTRIAL, MINING, CONSTRUCTION, FIREWORKS: WHICH ARE THE DEADLIEST JOBS?

Mining has undoubtedly recorded the worst work-related casualties. Some 7,000 miners were killed in 2001, 5,600 of them in coal mines. The fatalities were largely

³ Source: China Daily, 01/02/2002, "Production safety major concern in new year," <http://www1.chinadaily.com.cn/cndy/2002-01-02/50321.html>.

caused by mining accidents and explosions. Very disturbingly, it has been established that most of the mines in operation in the country are illegal. Despite efforts taken by the central government in the last few years to clamp down on these illegal mines, only a third of them were officially closed down by 2001. These illegal mines are the death traps for thousands of miners. Independent researchers estimate that about one million miners have contracted silicosis. Most miners are typically transient workers from the poorest parts of China, who have no other means of livelihood than working on the deadliest jobs in the country. It is widely accepted that most of the regular injuries and casualties among miners go un-reported in official records. Many miners are asked to sign a waiver of any legal claims, other than a pitiful lump sum compensation payment in the event of any injuries or fatalities on the job. This is nicknamed as “life-and-death-contract,” “sheng si zhuang” in China.

The other deadly, but much less noticed, occupation is with the building and construction industry. There have been few reliable records on construction industry injuries and deaths. Just like the miners, nearly all construction workers are migrants from the more remote or poorer regions of China. Most injuries and casualties go un-reported. Unlike the occurrence of spectacular mining explosions and disasters which have usually caught public attention, accidents in the construction are usually smaller in scale and hence go un-noticed more easily. But as well as accidents, occupational hazards also exist in long-term and invisible toxic exposure such as dust and asbestos. It is estimated that half of the world’s pneumoconiosis victims live in China. The Ministry of Health estimates that these number 550,000. Exposure to asbestos is widespread and un-monitored.

Fireworks manufacturing is another high-risk job. There are frequent incidents of explosions and fires in China’s fireworks factories. Most such factories are small size or even family operations in small towns and villages. H&S provisions are practically non-existent. Worse still, young children are employed and have been found among the victims of many of the accidents in this sector.

Farmers are easily exposed to pesticide poisoning in the absence of health and safety information and training and regulatory regime. Sale of banned, toxic pesticides is widespread. There has yet to be a comprehensive body of epidemiological data to establish the extent of this problem.

REGIONAL/GEOGRAPHICAL: THE POORER IS NOT NECESSARY THE WORST OFF

Overall, two dividing lines can be drawn in China to delineate level of development and economic affluence, one between West and East and the other between North and South. The pattern is that the southern and eastern coastal regions are the most developed, and the remote western and northern regions are the most depressed. However, H&S records do not coincide with these patterns of development. While mining disasters usually take place in the northern and western regions, frequent and serious industrial injuries also take place in the more developed regions of the south and eastern coastal areas. This reality illustrates that economic growth does not automatically lead to improvement in H&S.

Factors Behind Non-implementation of Laws and Rules

The following official analysis presents quite accurate diagnosis of the problems in health and safety by identifying the real causes in malpractice and corruption rather than in the institution of laws and regulations.

The new work safety law just plugs the loopholes. But accidents are never the result of a single cause. Other malpractice, such as loose implementation of the existing regulations, corruption, and protectionism, are also to blame.

Had they been implemented, current regulations would have been adequate, if not sufficient, to avoid the occurrence of fatal accidents. Unfortunately they were not.

Reports show that the owners of the small mines that exploded did not take measures to create a safe environment for the workers. But they also were not enforced by local law enforcement officers.

Where were those officers? Malfeasance, even corruption, can explain this. Even if some were to rise up and enforce the law, they could encounter a mountain of obstacles due to local protectionism.⁴

⁴Source: China Daily (07/03/2002) “Law enforcement more important,” <http://www1.chinadaily.com.cn/cndy/2002-07-03/76233.html>.

Laws and regulations fail to be implemented because there is an impenetrable mesh of intertwined vested interests between business operatives and local officials. In most instances, this has succeeded in fencing off the central authorities. There is a triangular deadlock between central government, local authorities (and employers) and workers. The primary victim of this situation is the exploited and oppressed workforce. The triangle is top-heavy with the workers at the bottom enjoying little power of leverage. Many factors account for the deadlock:

MALPRACTICES OF EMPLOYERS

Little or ineffective incentives and disincentives exist to deter employers from malpractice. It is often cheaper and easier to violate regulations than to observe H&S standards.

WEAK POSITION OF THE WORKERS

The workers, who have the strongest interest in averting H&S violations, are in no position to assert their demands. They suffer from job insecurity, absence of labour contracts, long working hours, forced overtime, piece rate wages, lack of H&S provisions, and meagre injury compensation. These conditions dis-empower workers from forming a counter force to employers' violations.

INEFFECTIVE GOVERNMENT INSTITUTIONS

The combination of a non-independent judiciary, powerless lawyers, and corrupt government officials have rendered laws ineffective. The central government often fails to exert or sustain its authority over local officials.

EMBRYONIC CIVIL SOCIETY

The civil society is very weak. The interests which normally are vital for averting malpractice are not well organized nor represented. China lacks the basics of a healthy civil society which would include independent labour unions, insurance companies, industrial associations, chambers of commerce and community organizations.

WATCHDOGS IN CIVIL SOCIETY

The essential actors who can function as watchdogs are weak. These include: the press, health professionals, advocacy and campaigning NGOs, academia.

A breakthrough in improved H&S will only occur if ways are found to prise apart the existing complicit interests which leaves the H&S offenders freedom to continue their malpractices. The logical way forward is to begin by strengthening the interests which could counter the current power imbalance.

Possible Solutions

Solutions to corruption and malpractices lies in better monitoring, effective penalty and rewards mechanisms and the existence of counter power or interest intervention. Improving H&S requires work on the government, employers, the employees and the society at large. A culture of H&S needs to be developed. A sound functioning of the civil society will actually assist the implementation of desirable policies and regulations decreed by the central government. In fact, the new Work Safety Law stipulates that monitoring and supervision of H&S should be exercised by four main actors: the labour unions, the media and public opinion, members of the public, and community organizations.

CIVIL SOCIETY: COMPANIES, LABOUR UNIONS, NGO, PRESS, LAWYERS, ACADEMIA

Employers

Solutions to corporate malpractices lies in an effective monitoring and punishment mechanisms to deter violations. Incentives can also help persuade companies the benefits of good H&S practices. Awareness and capacity training will help management personnel to embark on H&S schemes. Best practice awards can play the role of positive public reinforcement. Stringent and heavy penalties will help deterring offenders. Industry or business associations can provide research and program support on H&S for individual plant operators.

Employees

The solution to the weak position and vulnerability of workers lies in strengthening their capacity to represent their interests and their collective bargaining power. A strong worker representation can act as the best monitor and enforcement

of H&S at the workplace. Workers should be given information, training and capacity to play a central role in H&S practices at plant level.

A great deal of research has emphasized the positive role that workers' participation can play in H&S. (Creedy) Existing laws (Labour Law, Trade Union Law, Work Safety Law) encourage the participation of unions in plant H&S committees. For example, Article 19 of the Work Safety Law stipulates that those operators in mining, construction and manufacturing and handling of dangerous goods which employ over 300 workers must set up work safety management machinery, or full-time work safety management staff. The WSL also protects eight rights of the employees: the right to information, to put forward recommendations, to make criticisms, to expose and litigate against violations, to refuse operation, to emergency departure from dangerous workplaces, to legal compensation, to safety equipment and to H&S education and training.

The weakness of current system, however, lies with the inability of the official unions to represent workers' interests and demands. The ACFTU officials are subjectively and objectively seen as accountable to the management and government rather than to the workers. Alternate means of workers' participation will need to be developed to enable meaningful labour representation.

The Press

A watchdog mechanism functioning in a civil society is the most effective and efficient way to tackle malpractice. This role can usually be performed best by an independent press and non-governmental organizations (NGOs). The Chinese press has actually played a crucial role in the past few years in exposing and investigating industrial disasters and injuries. Nevertheless, investigating reporters have been subjected to intimidation and obstruction by local government officials and business owners. Sometimes these journalists receive backing from their media bosses or from the central government authorities; but on other occasions, they are also censored for pursuing "politically sensitive" subjects. Strengthening the culture of investigative reporting by the press will play a powerful role in exposing and deterring H&S malpractices. High-profile press awards on this subject may serve to encourage initiatives in this direction.

NGOs

NGOs play an indispensable role in helping to draw attention to issues, in organizing community efforts and representation, in articulating non-official interests, in voicing demands and recommendations, in public education and information, and in providing community services. There is a slow but steady growth of NGOs in China. Some are working on H&S issues. Very few receive government support or even endorsement. Government needs to be persuaded to give more space and support to the NGO initiatives. Supporting the further development of the NGO community will help a rapid delivery of a cultural change on H&S.

The Legal system and insurance companies

One of the main incentives for H&S violations is the general low costs incurred by employers and other offenders even when their violations are exposed. Offending employers often get away without paying much compensation to their victims. Workers have little support in pursuing compensation. Support for more effective litigation, including lawyers and litigation funds, would provide badly needed facilities to redress this imbalance.

Insurance companies, given the right conditions, could also play a positive role in H&S management and monitoring. Article 43 of the WSL requires all work units take out industrial injury insurance. Insurance companies could add pressure to companies to clean up their health and safety practices or face higher premiums, or even fail to find insurers.

Under the new Prevention of Occupational Disease Law, workers will be able to seek legal aid if their right to work in a safe environment is violated by employers. The highest fine for enterprises violating the Law has been increased tenfold to 500,000 yuan.

Academia

There are many researchers and academics studying and investigating various H&S issues. Given adequate capacity and appropriate platforms, academia could play a crucial role in identifying problems and supporting solutions. Scholarships on H&S would help this development.

Government: labour ministry, State council, local government, judiciary, ACFTU

Current government thinking of its strategy on H&S is to offer more incentives to employers for good practices and harsher penalties for offenders.

Because all these measures do little to alter the fundamental problem behind the many disasters—corporate failure to ensure adequate safety measures and supervision, either due to negligence or the blind pursuit of cost-cutting and profits.

Unless enterprises take the initiative, it is only a matter of time before more disasters occur. A close review of recent coal mine accidents reveals that big disasters often occurred in small businesses where workplace health and safety are sacrificed to cut costs and maximize profits.

While big companies may be more willing to provide a safe working environment, there are few incentives for unknown small enterprises to follow safety standards. And the penalties for safety breaches are too little to bring a significant shift in attitude among employers.

Lax law enforcement and corrupt officials also play roles in the failure to curb safety violations.

Therefore, to build a safety culture, the government should provide more incentives to get enterprises to ensure safe working conditions for their employees and should also severely punish enterprises that fail to maintain safety standards.”⁵

In addition to the role of the judge, the role of central government lies in creating and maintaining the macro environment for the sound functioning of policies and law and order at local levels. As part and parcel to this role, the government needs to provide the space for more independent and critical civil society to develop and function.

Conclusion: a New Strategy of Intervention

During the past decade or more, a great deal of resources and efforts have been invested in strengthening the capacity and resources of the various government institutions such as the labour ministry, the State council, local government, the judiciary, and the ACFTU. A vast amount of support has been given by numerous bilateral and multilateral bodies, foreign governments and non-government agencies to strengthen the Chinese Government's capacity in this regard. While this investment has borne some fruits in facilitating institutional changes in the central government, the H&S situation has gone from bad to worse.

There is a need for a fundamental review of the previous strategy of focussing on the official machinery.

The U.S. Government has in 2002 allocated 10 million U.S. dollars to aid China to improve labour standards and rights. Putting resources into supporting and facilitating the actors, interests, and forces in civil society outlined in this paper would be a more effective and efficient strategy for facilitating the cultural changes needed for workplace safety to be taken seriously.

The strategy of intervention may best lie in partnership with local initiatives (gathering strength), targeting the worst problems (setting priorities) and seeking the most effective entry points (maximizing efficiency). Establishing flagships of best practice can also be an effective way for outside players such as foreign governments and companies to bring about broader change.

Strengthening a society of plural interests and levels of representation is the most promising way to break through the existing impasse between the desire of the central government to improve the situation and the entrenched interests of local authorities and local business owners. Empowering a wider range of actors can shift the balance in favor of the millions of workers who currently face dangers to their health on a daily basis.

⁵ Source: China Daily (06/11/2002), Opinion: “Government has role in workplace safety,” <http://www1.chinadaily.com.cn/news/cb/2002-06-11/73260.html>.

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PREPARED STATEMENT OF HAN DONGFANG

PROPOSALS TO IMPROVE OCCUPATIONAL HEALTH AND SAFETY IN CHINA

NOVEMBER 8, 2002

CHINA'S COAL MINING INDUSTRY REQUIRES OF URGENT MEASURES

Statistically, gas forms the most serious threat to coal miners. According to the People's Daily (September 26, 2002), gas-related accidents caused 43 per cent of all fatalities in coal mines during 2001. Furthermore, in the 10-year period from 1991–2000, the number of coal miners killed in gas-related accidents nearly doubled. In recent years safety investment in China's key mines had fallen between 3 and 4 billion yuan short of previously set targets. In Heilongjiang alone, investment in coal-mining safety was 570 million yuan short of the planned target figure. Moreover, the People's Daily report also stated that over the last 2 years investigations had revealed that many of the small-scale mines closed down by local authorities had failed to follow even the most basic safety procedures such as the installment of gas ventilation and monitoring equipment.

In an emergency national telephone conference on coal mining safety convened in Beijing on July 7, 2002, the head of State Administration of Work Safety (SAWS) Wang Xianzheng emphasised that small coal mining enterprises must implement safety procedures in accordance with the law and that regulations on ventilation limits and gas density must be followed. When excavating gas-filled coal seams, procedures to release gas prior to excavation must be upheld. In accordance with the law, no excavation may take place in shafts that lack gas ventilation equipment or safety buffer layers. Production in coal mines that do not have gas monitoring and warning equipment with the ability to cutoff electrical power must stop production immediately.

The above speech by Wang Xianzheng clearly maps out major problems in China's coal mining industry and that reveals how many coal mining companies are not fulfilling obligations to implement safe mining operations. Coal shafts without proper ventilation facilities, no gas extraction equipment in mines and coal seams with high gas concentration are extremely common as are shafts without adequate automatic warning facilities that guard against sudden increases in gas. Mr. Wang pointed to the coming implementation of China's new "Work Safety Law," which comes into force on November 1, 2002 as an opportunity to get safety work in the country's coal mining industry on to a sound legal footing.

During the last 2 years I have carried out a number of interviews with those involved in coal mines where gas explosions and other accidents have taken place. I firmly believe that the problems pointed out by Mr. Wang are a very clear illustration of the serious occupational safety issues facing the Chinese coal industry. The situation we are in right now not only threatens the lives of millions of coal miners on a daily basis, but also the healthy development of the coal mining industry along with overall social stability. As such, improved safety in the coal mining industry is the responsibility of three major players involved: the employers, the government and the workers. I am in total agreement with Wang Xianzheng's assessment that only by addressing the problems via sound legal channels can the basic solutions be found.

THE CURRENT SYSTEM OF SAFETY MANAGEMENT IN COAL MINES: IS IT EFFECTIVE?

At present, SAWS is the official organisation responsible for OSH laws, regulations and technical standards as well as inspecting compliance and safety management systems. The bureau's official website (<http://www.chinasafety.gov.cn>) provides information on the measures the government frequently adopts to improve safety in the coal mining industry. These include:

1. Top-down safety publicity campaigns on OSH, including convening meetings and conferences of safety officials and the regular issuing of OSH documents and guidelines;
2. Closing down small coal mines that fail safety inspections;
3. Suspending production in state-owned coalmines that fail safety inspections;
4. Demanding that local governments and employers take OSH concerns seriously as well as guarantee investment in safety procedures and equipment and adequate training for personnel.¹

But how effective is this top-down propaganda-based approach to OSH?

In March this year SAWS proclaimed June 2002 as "work safety month." However, according to figures posted on their website, 400 coal miners died in May this year and 449 in June—the designated safety in production month. The ongoing tragedy continued into July when a further 482 coal miners were killed at work.

In the aforementioned telephone conference SAWS deputy director Zhao Tiechui pointed out that the OSH system established in the coal mining industry existed in name only. Documents issued from the centre are simply passed on to the next level down and ignored. Meetings are held but the safety measures they discussed never got further than the conference hall. He also stated that the problems were exacerbated by old and outdated machinery in state-owned mines, inadequate safety operation procedures and a decline in these mines' fire prevention facilities and fire-fighting equipment. Using the recent accident at a mine owned by the Jixi Mining Group as an example, Mr. Zhao pointed out that the State Administration for Coal Mine Safety Supervision (SACMSS) had issued six warnings to the group. The warnings stated that its investment in safety systems and operations had fallen and as a result there was serious safety hazard. Yet the group both refused and procrastinated over instructions to rectify the situation, citing economic difficulties. On June 20, just as an inspection team despatched by the State Council had completed its work and issued yet another notice to cease production until safety standards were met, an explosion and fire ripped through the mine, killing 115 miners.

Mr. Zhao also said that local governments, especially at county and village level were unwilling to close down small mines that failed to meet safety standards due to a dependence on tax revenues from these operations and that it was impossible to prohibit illegal small-scale mining. At the same time, some mine owners simply ignored ventilation and safety measures and organised groups of workers into working extra long shifts in dangerous pits so as to extract as much coal as possible before they were ordered to close down. Obviously, this tactic dramatically increases the chances of accidents.

On July 19, the People's Daily quoted an interview with the head of the Jixi Mining Group Safety Inspection Office Meng Zidong and the director of Jilin provincial office of SACMSS Dong Xiangge: "[W]hat can we do if a mine refuses to implement a notice to cease production following a safety inspection? We can't force them."

Clearly, we cannot expect miracles from this traditional top-down model of OSH inspection and management. The government is doing all it should be doing to regulate the industry and yet new ideas are still required to improve the situation unless, of course, we simply sit back and accept the crisis is insoluble. What then, is the way forward?

A NEW APPROACH

Clearly lacking in the traditional approach to OSH in China is direct worker participation. No matter from which angle we examine the issue of health and safety at work, there is one inescapable common denominator: namely that the status of workers themselves remains passive. As such workers are reduced to the level of a passive 'target audience'. They are 'targets' of OSH propaganda; 'targets' of inspection and monitoring; 'targets' to be restricted by various laws and regulations; and, inevitably, easy 'targets' for OSH tragedies.

However, if we take the significant step of moving on from this outmoded approach and place the right to actively monitor health and safety in China's coal

¹ See the circular issued by SAWS No. 21 (2002): "Urgent notice on strengthening the 'one ventilation three precautions' work in coal mines."

mines into the hands of the miners themselves, the situation will take on a completely different appearance. Over the last 2 years, I have conducted interviews with coal miners, management cadres and government officials as well as with the families of miners killed in accidents. This work has led me to the conclusion that it is the miners themselves who are best placed to understand the importance of OSH. For them it is not simply a matter of reports and conferences. The issue is of paramount importance to their families and a matter of life and death to themselves.

My interviews also testify to the fact that as far as OSH is concerned, miners are restricted to a totally passive status. Yet, if we begin by strengthening the legal system governing OSH and keep strictly to the letter of the law in order to implement guarantees that give face workers the right to refuse to work in an unsafe environment without risking punishment or any other repercussions from management, we can transform workers from being passive 'targets' of OSH management and legal regimes to being active implementers of OSH monitoring and implementation. This paradigm shift will also move OSH in China on from the traditional, largely ineffective model of top-down management and implementation.

The crux of our proposal is for underground face workers in China's coal mines to organise a "workers' OSH committee" in their workplace, elected by face workers themselves. Using this committee as a baseline, an "enterprise OSH committee" should be set up made up of members of the workers' OSH committee and enterprise management on a fifty-fifty basis.

LEGAL BASIS FOR A "WORKERS' OSH COMMITTEE" IN CHINA'S COAL MINES

Article 19 of China's new "Work Safety Law"(hereafter Safety Law) states that work units producing, operating and storing dangerous materials as well as mining and building work units shall set up OSH management organisations or allocate full time OSH personnel to administer safe practices at work. Other work units with over three hundred staff and workers must also set up OSH management organisations or allocate full time OSH personnel to administer safe practices at work. Work units with less than three hundred staff and workers must allocate full or part time OSH personnel or entrust such duties to technically qualified personnel in line with China's laws.

Article 45 stipulates that employees have the right to be fully aware of all hazards present in their workplace as well as the associated preventative and emergency measures. Workers also have the right to make suggestions on OSH policy to their work unit.

Article 46 stipulates that workers have the right to make criticisms, reports to the relevant department and take legal action on existing OSH problems. Workers also have the right to refuse orders that violate OSH rules or work in hazardous conditions.

Article 47 states that workers who encounter a situation during work that directly endangers their personal safety have the right to stop work and, after taking all appropriate measures, to leave the workplace.

At the same time, Article 50 stipulates workers legal obligations to accept education and training in matters pertaining to OSH and take steps to render themselves fully aware of the appropriate and necessary OSH knowledge. They must also improve their skills and ability in safe working practices as well as accident prevention and emergency procedures.

The Safety Law also stipulates the functions of trade unions regarding OSH at work. Article 52 states that the trade union has the right to make suggestions and put forward opinions on the facilities for OSH which shall be designed, put into operation and monitored at the same time as the main project. Trade unions have the right to demand the correction of any aspects to work place operations that violate OSH laws and regulations or harm the legal rights of staff and workers. They also have the right to make suggestions aimed at solving problems that arise from the violations of OSH rules, orders from management to work in hazardous conditions or the discovery of hitherto unforeseen dangers at work. The work units are obliged to respond to the suggestion promptly. Trade unions also have the right to propose that management make sure that their employees leave a place of work on the discovery of life-threatening hazards. In such cases the work unit must act on the proposal immediately.

As we can see, the problem lies not with the aforementioned rights and regulations but with the official trade union's ability to implement them. Given the nature of the official trade union, there is no way that it can legally and effectively put into practice trade union functions in the field of OSH inspection and administration in the workplace. Moreover it is unrealistic to expect it to be able to fulfill these trade union functions in the foreseeable future. Our proposal for the establishment

of “workers’ OSH committees” (WOC) must also be considered against the reality that many private, foreign-owned, joint-venture and restructured state-owned enterprises as well as subcontracted coal mines and shafts do not even have trade unions. A WOC could therefore rapidly begin to address OSH monitoring and management on the basis of the aforementioned laws and regulations. In mines and enterprises where trade unions do exist, the WOC can cooperate with the trade union in improving OSH measures, inspection and management at the enterprise on the basis of the law. This cooperation between the WOC and the existing trade union can avoid the sensitive question of challenging or changing the nature of the official trade union and will be able to complement and complete the work and functions that the latter is unable to fulfill due to existing legal restrictions. We hope that the result will not challenge the existing trade union system, improve OSH in the mines and reduce the threat of injury and death to those who work in them.

At this point we must also point out that what we are discussing is how to inject new ideas, thinking and content into a traditional top-down system of OSH monitoring and management that reality has proved at best unsatisfactory and at worst impotent. In effect, we are trying to forge a new approach to improving OSH in the mines. The key focus of our proposal is to reposition OSH in the workplace itself and move the entire issue away from the meeting rooms of government departments or the remote discussions of academic conferences and seminars. It is our view that the starting point for improving protection must be to encourage workers themselves to get involved in OSH based on their legal rights which we have explained above.

THE ESTABLISHMENT OF WOCs AND THE AIMS OF GOVERNMENT POLICY

On December 12, 2001, China’s State Economic and Trade Commission (SETC), with reference to the “ILO Guidelines on Occupational Safety and Health Management Systems” formulated a document entitled “Guidelines on Occupational Safety and Health Management Systems” (hereafter Guidelines). The aim of this document was to “encourage all employees of employing units, especially top level executives, managers, workers and their representatives to adopt rational principles of OSH management and methods in order to uphold and continue to improve effective OSH in China.” The Guidelines also stated that the “State Administration of Work Safety (SAWS) was responsible for drawing up, implementing and regularly evaluating national policy on work units’ internal OSH management systems.” The Guidelines also confirmed that “work units shall voluntarily set up and maintain OSH management systems and support employees and their representatives to actively take part in OSH activities. They shall also confirm and guarantee that OSH measures and requests apply not only to their own employees, but also to subcontractors and directly employed temporary workers. Enterprises involved in high risk work along with those employing units that have suffered serious accidents have a special responsibility to set up and maintain OSH management systems.” The Guidelines also stipulated that once enterprises had set up “OSH management systems,” they should also establish an “OSH Committee” in which a fair proportion of workers are to take part. As the Guidelines have had for little more than half a year to be put into practice, I believe that coal mining enterprises have not yet had time to set up these systems and committees.

We believe that there is little difference between the voluntary participation in “OSH management systems” stipulated by the Guidelines document and the WOC that we are advocating as a practical and realistic response to dangerous workplaces in China.

THE CHINESE GOVERNMENT’S COOPERATION ON OSH WITH INTERNATIONAL STATUTORY BODIES

Article 2 of the SAWS document (No.6, 2001) “Temporary Regulations on the Management of Foreign Affairs of the State Administration of Coal Mine Safety Supervision under SAWS,” which came into effect on January 1, 2002, states that “the general affairs office (foreign affairs department) of the State Administration of Coal Mine Safety Supervision under SAWS (hereafter Foreign Affairs Department—FED) is responsible for foreign affairs work related to the OSH monitoring and management. This includes guidance, co-ordination, administration and co-ordination of all work and matters relating to foreign affairs.” Article 3 emphasises: “[T]he principle that ‘external affairs are important and all matters must be dealt with on the basis of requesting instructions’. All activities of work units involving foreign external matters where problems are encountered shall promptly request instructions from the leaders of the foreign affairs offices of the relevant national bureaux via the [aforementioned] FED. Where necessary, the national bureaux shall request instruc-

tions from the relevant departments of the Central Government.” Article 7 of the same temporary regulations also sets out in detail the corresponding responsibilities in handling foreign external matters.

ON THE SELECTION OF MEMBERS TO THE WOC

The process of selecting and organising a WOC should be as direct and straightforward as possible. Each workshop, mine (mineshaft) and even mine work team can organise a WOC Group from which workers in enterprises and mines can elect a WOC,

1. In order to encourage the participation of the workforce, the workers must elect all WOC members themselves. Most important, the WOC shall not be appointed, either by management or government departments. This would be no more than a return to the traditional top-down approach and result in workers having no confidence in the new WOC even at its inception. It will also sacrifice the aim of encouraging workers themselves to take part in OSH affairs.
2. In large-scale State owned mines, the WOCs can be set up within the enterprises.
3. In Provinces such as Hunan and Guizhou where small-scale mines are comparatively common, local coal sector WOCs can be elected at county or city level with a ratio of one committee member for every thirty members, with a minimum of at least two members from each coal mine. WOC members must be coalface workers able to inspect safety conditions in the mine at all times. Membership of the WOCs should be 1 year, during which time he or she may not be dismissed or fired. The WOC shall meet once every 3 months during work hours and set up a working committee that shall deal with day-to-day complaints and reports from the workforce. Monthly reports on the results of complaints and how they are dealt with shall be sent to the WOC on a monthly basis. Where local coal mining WOCs are set up at county and city level, they shall register with the Ministry of Civil Affairs and filed with the Department of Labour and Social Security and SAWS.
4. A pilot “OSH Co-ordinating Committee” (OCC) shall be established at county (or city) level composed of an equal number of government, enterprises and WOC representatives. WOC representatives to the OCC shall be elected by WOC members.
5. A coal mining sector OCC Congress shall be convened once a year during which negotiations between government, employer and worker representatives shall take place. These will include a critical assessment of the past year's problems and set a figure for financial investment in OSH facilities for the following year. Deadlines should be set for funding and OSH investment and all parties shall sign an agreement on questions relating to safety standards in coal mines.
6. The WOC shall set up a fund to meet legal fees of any WOC member who is dismissed by his or her employer as a result of activities related to the WOC.

THE WOC AS A PLAYER IN ENTERPRISE DEVELOPMENT

Once established, it is envisaged that the new WOCs will be a source of renewed energy and vigour in China's exhausted OSH system. The election of face workers who are only too keenly aware of the underground hazards they face will have a direct beneficial effect on OSH measures in the work place. Moreover, the capacity of WOC members to raise questions related to violations of safety rules and the existence of worn out and ineffective safety and equipment and installations will reduce the number of accidents.

The fact remains that many small coal mines do not have even the most basic safety equipment and continue to operate in extremely dangerous conditions, usually under the protection of local government officials. While some of these officials are genuinely concerned to use tax revenue from coal mining in order to meet targets assigned to them by higher levels of government, their role is more frequently determined by bribes from coal bosses or their personal ownership of shares in local coal mining enterprises. Whatever the reason, the result is the same: a blind eye is turned toward safety concerns in the mines. WOCs will serve as an effective channel through which bribery and financial conflicts of interests caused by government officials' purchase of shares in local mining companies can be exposed and the practice ultimately stopped. WOCs right to monitor the workplace will gradually improve a situation where local officials ignore OSH matters due to factors relating to personal gain.

Of course, the setting up of WOCs will have unavoidable effect of increasing investment in OSH measures and this will in turn reduce profits. However, we believe

the WOCs can become a watershed in the development of China's coal industry—in line with government policy. For example, the WOCs will be in a position to urge employers to buy basic work injury insurance for their employees. The insurance company will need to be fully aware of the risks before offering insurance and as such will evaluate OSH systems in the mine before offering a policy. This will serve as another mechanism that will have a positive impact on safety. Of course, injury insurance will lead to an increase in an employer's initial investment, but it will lessen the risk of enterprises having to make large compensatory payments after an accident has occurred, thus reducing the likelihood of bankruptcy and consequent unemployment.

I believe that planned investment in OSH aimed at preventing injury and accidents is part of the overall production costs and should be budgeted for as such. Managers' current mindset to OSH costs focus on one-off payments required as compensation following an accident. The establishment of WOCs will help the industry's managers to move on from this essentially passive reactive attitude to a rationale, budgeted and proactive policy on OSH matters. Seen in this light, the proposal to establish WOCs will actually assist in the healthy, sustainable development of China's coal industry.

THE FIREWORKS INDUSTRY

At present, the coal mining industry is beyond doubt the government's biggest headache as far as OSH is concerned. It continues to have the worst fatality rate of all China's industrial sectors. Our proposal for WOCs therefore starts with an urgently needed and feasible plan for the coal industry. However, the OSH situation in the fireworks and firecrackers industry is also extremely serious. The industry is plagued with regular explosions that kill and maim dozens of people. Worse still, because most of the assembly of fireworks and fire crackers takes place in the homes of villagers, the accidents always involve the deaths of children.

The response of the government of Jiangxi Province to the problem—where small-scale fireworks production is extremely widespread—has been to announce a policy of killing off the fireworks industry in the province over the next 2 years. However a number of factors make this problematic. Firstly, the fireworks sector in Jiangxi is enormous. Second, millions of peasants who cannot support themselves off the land alone rely on fireworks production simply to get enough to eat and send their children to school. The likely result of the Jiangxi government's policy will be to force production into illegal underground workshops that are even harder to regulate, especially from an OSH point of view.

Fireworks production is frequently organised around a village-level enterprise that subcontracts out assembly work to local village residents who work at home. Nearly all the accidents are explosions followed by fire that affect those at the actual accident site, but more often than not those living nearby. Using the WOC model proposed for the coal mining industry as a model, we also propose that "villagers' OSH committees" (VOC) be set up to monitor the safety measures of village-level work units and companies responsible for fireworks and firecracker production. The VOC members should be directly elected by village residents who would then elect a county-level "community OSH committee" (COC). Finally a tripartite sector-level OSH coordinating committee (OCC) should be set up composed of government officials from relevant departments, industry representatives and village residents elected by the local COC. The OCC should be registered with the Ministry of Civil Affairs and filed with the MOLSS and SAWS.

PREPARED STATEMENT OF CHAN KA WAI

NOVEMBER 8, 2002

HEALTH AND SAFETY PROBLEMS IN FOREIGN-FUNDED ENTERPRISES

Foreign investment has increasingly moved to China after its entry to the World Trade Organization last year. According to government statistics, by the year 2000, there were 28,455 foreign-funded enterprises (including investment from Hong Kong, Macao, Taiwan and other countries) in China. Their investment reached RMB 2,346.5 billion totally and more than 6.42 million workers were employed.¹ Many industrial accidents occur in foreign-funded enterprises. Among different health problems, occupational disease has been a growing issue in the last few years.

¹ See China Statistical Yearbook 2001 and China Labour Statistical Yearbook 2001.

OCCUPATIONAL DISEASES

Now more than 16 million Chinese workers are exposed to toxic or hazardous conditions in the workplace. By law, more than 10 million workers should receive regular health examinations, but only one third of them have done so.² Many of the unexamined workers suffer from occupational diseases. These statistics do not include workers in village and township enterprises or small workshops. Their health and safety situations are more grave. It also does not include those workers whose occupational diseases have been certified and who have gone back to their hometowns. Among various occupational diseases, pneumoconiosis is the most common. At present, 558,000 pneumoconiosis cases have been reported in China, of these 425,000 people are still living. Each year, 15,000–20,000 more cases are reported and more than 5,000 patients die of the disease. The death rate is 23.58 percent.³

Among those factories in which workers are exposed to toxic and hazardous conditions, many are foreign-funded enterprises. In 2000, the Health Ministry of China examined 1,426 foreign-funded enterprises where they found that 37.2 percent of the enterprises had occupational hazards in their workshops, and 34.7 percent of workers are involved.⁴ Poisoning in the workplace is a very serious issue.

On January 27, 1999, eight workers of the Ruyi Manufacturing Factory in Fujian suffered benzene poisoning. One worker died, and seven workers were seriously poisoned. Among the victims, the eldest was 27 years old and the youngest, only 17; the most senior worker in the factory had worked there for 8 months, and the shortest for only 2 months.⁵

In July 2001, 26 workers suffered benzene poisoning in Shenzhen and it is believed that more than 200 workers were affected but have not yet displayed symptoms.⁶

In February of this year, six women workers died of exposure to benzene at a shoe factory in Hubei.⁷ In July, 12 workers of the Anjia Shoe Factory in Dongguan, Guangdong were affected by benzene poisoning. Several of them are now paralyzed. The youngest victim was 16 years old.⁸ The Chinese Occupational Disease Prevention Law states that workers aged 16–18 are prohibited from working under toxic and hazardous conditions. However, factory management stated that they were unaware of the regulations. Clearly, education and monitoring efforts by the authorities are inadequate.

After investigation of the Anjia factory, more workers were shown to be affected, but many of them had already left the factory. It was reported that 39 women workers, whom it is believed have been affected by the poisoning, have not yet been located. When workers at the factory felt sick, they went to see a doctor. If their health failed to improve, they could not work and had to return to their hometowns. They never associated their sickness with the chemicals that they were exposed to each day.

Most workers know nothing about occupational poisoning. Cases come to light only when workers go to hospital or a large-scale poisoning occurs in a factory. Currently, the reporting of occupational diseases is very sparse. In Guangdong Province, from 1989–2001, 4,848 occupational diseases were reported. It is estimated that the rate of underreporting for occupational diseases is more than 50 percent, so that the real number of occupational diseases from 1998–2001 should be about 10,600, or an average of 800 cases resulting in 214 deaths each year. In spite of low reporting, the reported rate in 2001 is 2.78 times of that in 1997.⁹ Occupational diseases are more common in Shenzhen and Dongguan where most foreign-funded enterprises, joint ventures or the enterprises producing for foreign investment are located.

It is estimated that 10 million workers are exposed to toxic or hazardous chemicals or other materials each day in Guangdong, but there are less than 1,000 occupational disease inspectors in the Province. Each inspector is responsible for about 1,000 enterprises and more than 10,000 workers on average.¹⁰ This is an absurd ratio. For instance, many enterprises established in Heshan City since 1991 continue to reject inspection by health authorities. Currently 50.84 percent of the fac-

² Laodong Baohu (Labour Protection), May 2000, p.14.

³ Gongren Ribao (Workers' Daily) April 28, 2002.

⁴ Laodong Baohu (Labour Protection), May 2000, p.14.

⁵ Ibid, p. 15.

⁶ China Work Safety News, July 13, 2002.

⁷ Yangcheng Wangbao (Guangzhou City Evening Post), July 9, 2002.

⁸ Ibid.

⁹ Ibid.

¹⁰ Yangcheng Wangbao (Guangzhou City Evening Post), July 10, 2002.

tories in China, in which workers face exposure to toxic and hazardous conditions, have yet to be inspected.¹¹

Recently, the Guangdong provincial government examined 59,091 workshops of 8,410 enterprises. 96.43 percent of the workshops were in violation of health regulations.¹² This depiction is verified by the Hong Kong Christian Industrial Committee (CIC)'s recent research on the working conditions of four famous American toy brand names. In summer, 2001, CIC conducted in-depth interviews with 93 workers from 20 factories associated with eight enterprises using a standardized questionnaire. All interviewees were 18–35 years old.¹³

Among the interviewed workers, 22 worked in the colouring department. They were exposed to toxic chemicals daily. None of the 22 workers could name the chemicals they used every day or describe their hazards. According to the regulations, a clear label about the elements of chemical and its hazards is required. During our interviews, some workers complained of headaches, skin diseases, fainting and easy susceptibility to Hepatitis B due to long time exposure to toxic chemicals.

EXCESSIVE OVERTIME

Another serious occupational health and safety problem in foreign-funded enterprises is excessive overtime. According to CIC's research in 2001, 20 factories forced workers to work 14–18 hours a day on average. This is much higher than the legal standard which is 8 hours a day and with overtime not to exceed 3 hours a day.

The longer workers are exposed to toxic or hazardous materials, the higher the risk that workers will be injured. In 2000, a woman fell asleep because of several exceedingly long hour days. Her hair was pulled into a machine, and she was severely injured. In a previous research project by CIC, we found that some workers also complained that they suffered miscarriage because of long time exposure to toxic chemicals.

It is common for workers to become dizzy because of intensive overtime work or long time exposure to toxic chemicals. Workers even claim that some of there co-workers have died of long working hours.

According to CIC's researches in the last decade, many industrial accident victims did not receive adequate compensation. Most received only get meager compensation while being forced to leave work at the factory due to illness. CIC's research in 2001, revealed that very few workers knew about their rights under the Chinese Labour Law and the health and safety regulations. Only 20 percent of the workers interviewed had heard about minimum wages and the ceiling on working hours. None of them knew about the legal protection on women workers and young workers or about compensation for occupational injury.

In China, many private and foreign-funded enterprises make products for famous transnational corporations. Most corporations have their own labour codes of conduct and request that their business partners strictly comply with their codes to protect basic labour standards and workers' health and safety. However, corporations' pricing and ordering systems make it impossible for their suppliers to observe the codes. Suppliers merely shift their financial problems to their workers. Corporations give very low payments for their manufactured goods and suppliers then give low pay to workers. When corporations give a very short lead-time to their suppliers who are forced to make workers work overtime hours for long periods of time. According to information from the toy industry in Hong Kong, the labour cost of some toys is only 0.4 percent of the toys' market price. Toy brand name companies often give only 2-week lead-time for orders of more than 10,000 pieces of toys.

A MATTER OF POWER

The health and safety issue is not only a technical issue. It is directly related to the power structure throughout the whole production chain with its complicated sub-contracting system. The upper levels in the chain impose conditions on the lower levels. The lower levels can either fulfill these demands or receive no further business orders. Such pressure is endemic to the sub-contracting system. Workers are always at the bottom.

Consumer campaigns in developed countries seldom address this problem. Most of the energy in these campaigns is spent on "independent" monitoring or the implementation of corporate codes. In fact, such monitoring does not change the unequal power structure in the production chain, but rather it perpetuates the existing

¹¹ Gongren Ribao (Workers' Daily), April 28, 2002.

¹² Yangcheng Wangbao (Guangzhou City Evening Post), July 10, 2002.

¹³ How Hasbro, McDonald's, Mattel and Disney Manufacture Their Toys (HK: Hong Kong Christian Industrial Committee, 2001)

structure, and, in the end, creates hardships for workers. Some independent monitoring schemes, such as SA 8000, focus only on the manufacturing process and ignores the pricing and the ordering problems. This only forces manufacturers and workers to bear all burdens while corporations have to do nothing. Unless the pricing and delivery lead-time problems, as controlled by corporations, are addressed, workers' rights and safety cannot be guaranteed.

Of course, manufacturers do not have clean hands. Manufacturers have to comply with the Chinese Labour Law and all health and safety regulations. Under no circumstances, can manufacturers excuse themselves when they violate the relevant regulations and basic labour standards. Manufacturers have to provide workers a safe and hygienic working place. However, in the keen competition to maximize their profits, many manufacturers disregard workers' safety.

External monitoring, to a certain extent, may help improve the situation, but monitoring is more or less a game of "cat and mouse." Both monitoring organizations and factory management try to use different ways to deal with each other. That only creates mistrust on both sides and cannot help solve the problems.

Moreover, due to limited manpower and complicated sub-contracting, only a few big vendors will be inspected, and their sub-contractors are usually neglected. The frequency of monitoring is also a problem. However, more fundamentally, even though a factory has very good health and safety program, there are still all kinds of occupational accidents. These circumstances are related to factory management and practices. Some health and safety facilities are not workers-friendly. For instance, in Mexico, a garment factory gave workers earplugs, but workers refused to wear the equipments, because it is more dangerous, for workers not to be able to hear.

THE ROLE OF WORKERS

Health and safety is also a worker issue. It is heavily dependent on workers' involvement and a good communication system between management and workers. In fact, workers are the best monitors of their factories. They know the factory much better than auditors do. No monitoring groups can replace workers in improving work environments.

In December 2001, the Chinese Government issued two important OHSMS documents, "Occupational Health and Safety Management System Guiding Opinions" and "Occupational Health and Safety Management System Auditing Framework."¹⁴ In these guidance documents, the role of workers is clearly stated. Workers should be involved in the whole process, and a health and safety committee composed of workers should be established in each factory.

Health and safety committee composed of workers have already been established in several foreign-funded factories. In the last 2 years, CIC have tried hard to persuade different brand names manufacturers and factories to set up health and safety education programs in their factories in China. One of our main tasks has been to establish such health and safety committee composed of workers in factories and to make the committee a formal conduit for communication between workers and management. Committee worker/members should keep close contact with management and be accountable to the working masses in the factory.

The two OHSMS documents affirm our effort and give the health and safety committee a more formal status in factories. It enables workers to monitor their factories and to work with management to improve the working environment. The Chinese Government should speed up such work and give workers real power to monitor their factories.

Corporations also have their own role here. They should not just direct their suppliers or vendors to comply with the Chinese Labour Law and their codes of conduct. They should take the initiative to help their suppliers to establish such health and safety committees and to give substantial assistance to improve the working environment.



¹⁴It should be noted that the two documents are issued by the National Economic and Trade Committee, rather by the Labour and Social Securities Ministry. The Chinese Government takes health and safety issue as a trade issue, rather than a worker issue. For the two whole documents (in Chinese), see Laodong Baohu (Labour Protection), February 2002 and March 2002.